

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:18-cv-293-FDW**

JOHN ANTHONY HILL,

Plaintiff,

vs.

DERRICK PALMER, et al.,

Defendants.

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ORDER

THIS MATTER is before the Court on Defendants' Motion for Sanctions, (Doc. No. 42), and on the Court's September 9, 2019 Order requiring Plaintiff to show cause why this action should not be dismissed for lack of prosecution, (Doc. No. 45).

Pro se Plaintiff filed this action pursuant to 42 U.S.C. § 1983 while he was incarcerated. See (Doc. No. 1). The Amended Complaint passed initial review on several claims including deliberate indifference to serious medical and dental needs, due process violations, and claims under North Carolina law. (Doc. No. 12). Defendants were served and filed Answers and a pretrial scheduling order was entered. (Doc. No. 23).

On July 31, 2019, Defendants filed a Motion to Compel and Motion for Sanctions arguing that Plaintiff, who is no longer incarcerated, failed to attend a properly noticed deposition. (Doc. No. 37). On August 7, 2019, the Court granted Defendants' Motion and ordered Plaintiff to attend his deposition after receiving a renewed notice from Defendants. (Doc. No. 40). Plaintiff was cautioned that failure to comply may result in the imposition of sanctions including dismissal of this action without prejudice. (Doc. No. 40 at 2).

Defendants filed a Second Motion for Sanctions on August 26, 2019, arguing that Plaintiff


had again failed to appear for a properly noticed deposition. (Doc. No. 42). On September 9, 2019, the Court ordered Plaintiff to file a written Response within 10 days showing cause why Defendants' Motion should not be granted. (Doc. No. 45). The Court cautioned Plaintiff that failure to comply would result in dismissal of this action without further notice. (Doc. No. 45 at 1). The Order was returned as undeliverable to Plaintiff on September 23, 2019, and it was re-mailed to Plaintiff's corrected address on September 24, 2019. See (Doc. No. 49).

The 10-day time for filing a Response has expired and Plaintiff appears to have abandoned this action. Therefore, Defendants' Motion for Sanctions will be granted and this action will be dismissed without prejudice for failing to comply with the Court's August 7 and September 9, 2019 Orders and for lack of prosecution. Fed. R. Civ. P. 41(b) ("If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."); Link v. Wabash R.R. Co., 370 U.S. 626, 631-33 (1962) (although Rule 41(b) does not expressly provide for *sua sponte* dismissal, a district court has the inherent power to dismiss a case for lack of prosecution or violation of a court order).

IT IS, THEREFORE, ORDERED that:

- (1) Defendants' Motion for Sanctions, (Doc. No. 42), is **GRANTED**.
- (2) This action is **DISMISSED** without prejudice for lack of prosecution and for failure to comply with this Court's Order dated August 7 and September 9, 2019.
- (3) The Clerk of this Court is directed to terminate this action.

Signed: October 7, 2019


Frank D. Whitney
Chief United States District Judge 